



REPUBLIC OF KENYA



**Koech v Sang (Environment & Land Case E002 of 2020)
[2023] KEELC 16664 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16664 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E002 OF 2020
MC OUNDO, J
MARCH 23, 2023
IN THE MATTER OF REMOVAL OF CAUTION
IN THE MATTER OF LAND PARCEL KERICHO/KONGOTIK/1200
AND
IN THE MATTER OF LAND REGISTRATION ACT 2012**

BETWEEN

SAMUEL SIGIRA KOECH PLAINTIFF

AND

VINCENT KIBET SANG DEFENDANT

RULING

1. By an Originating Summons dated November 2, 2020, brought under the provisions of Order 37 Rule 8 of the [Civil Procedure Rules](#), and Section 73(1) of the [Land Registration Act](#) 2012 and all enabling provisions of the law, the Plaintiff hereinto seeks for the following orders :-
 - i. That the Land Registrar Bomet County Registry be and is hereby ordered to remove caution registered by the Defendant against land parcel Kericho/kongotik/1200
 - ii. That an Order do issue barring the Bomet Land Registrar from registering any other such caution or restriction on land parcel Kericho/kongotik/1200, by the Defendant or his mother Emily Chepkorir Katiinya or his brother and sisters.
 - iii. That the Defendants do pay the Plaintiff costs of this suit and interest thereon.
2. The said application was supported on the grounds therein as well as by a Supporting affidavit sworn by the Plaintiff on the November 2, 2020 wherein the Plaintiff had averred that he was the sole and absolute registered owner of land parcel No Kericho/Kongotik/1200 that he was alive and well and



- there was no way the Defendant could claim beneficial interest against him while he was alive. That he had suffered great prejudice since the Defendant lodged caution on his land.
3. There was no response from the Defendant wherein the application was heard orally and the Plaintiff testified that he was Samuel Sigira A Koech and lived in Kirobon within Rongai in Nakuru County. That he was a farmer who engaged in subsistence farming, keeping animals and growing crops for the family.
 4. That in regard to Kericho/Kongotik/1200, the same was a piece of land that measured 4 acres approximately 1.6 hectares which he bought in 1998. He produced its original title deed, which the Court compared with a copy and retained the copy as Pf exh 1.
 5. His evidence was that a friend of his had wanted to lease the farm but before he could lease, it he (Plaintiff) had conducted a search on the same on the September 25, 2015 as per a search certificate herein produced as Pf exh 2 wherein he had discovered that a 3rd party had claimed to be a beneficiary of the plot.
 6. That the said 3rd party, whom he named as Vincent Kibet Sang, (the Defendant herein) had placed a caution on the land and encroached on the same wherein he had put some structures while claiming to be his son.
 7. The Plaintiff conceded that the Defendant's mother had been his wife, with whom they had begotten two children one born in 1978 and the other in 1977. That the couple had later divorced.
 8. He testified that the divorce proceedings were for the February 16, 2017 wherein he had been granted a decree nisi, and later he had been granted a decree absolute dated the January 21, 2018. He produced the decrees as Pf exh 4 (a) and (b).
 9. That after discovering that there had been a caution placed on his land, he had gone to see the Land Registrar who had then summoned both parties to his office *vide* a letter dated April 29, 2015 herein produced as Pf exh 3. That he and the Defendant had both complied wherein he had sought for the caution to be removed but the same was not done.
 10. That he was incapacitated as he needed to use the land but could not access the same and therefore he sought that the caution be removed and the other person be ordered to refrain from using the land. He closed his case.
 11. In his submission, the Plaintiff framed his issues for determination as follows;
 - i. Whether this honorable court has powers to order removal of the said caution
 - ii. Whether it was proper for the Defendant to register that caution
 12. On the first issue of determination, the Plaintiff submitted while relying on the provisions of Section 73(1) of the [Land Registration Act](#) 2012, that indeed the honorable court was vested with sufficient power to order the Bomet Land Registrar to remove the Caution. Reliance was also placed on the provisions of Section 13(1) of the [Land and Environment Court Act](#) 2011 to submit that the law vested the court with original and appellate jurisdiction to hear and determine all disputes accordance with Article 162(2) (b) of the [Constitution](#) and with the provisions of that Act or any other written law relating to environment and land. Emphasis was also placed on the decision in Mary Njeri Mwaura (sic) (2017) eKLR,
 13. On the second issue for determination as to whether it was proper for the Defendant to lodge the caution on the suit land, the Plaintiff relied on the provisions of Section 71(1) of the [Land Registration](#)



Act to submit that even if the Defendant had proved to be his son, which was denied, that he could not claim beneficial interest in the suit land while the sole proprietor was still alive on grounds that he was fathered by the Plaintiff.

14. That indeed the Defendant was the son to his former wife whom they divorced sometimes back as per Pf exh 4(a) and (b). That the Defendant's interest in the land could only crystallize upon the demise of the Plaintiff. That no child could maintain a claim against a father on land or property during the lifetime of the father, which property belonged to the father absolutely.
15. That the fact that the Defendant had been given an opportunity to defend this suit but deliberately chose not to, clearly showed that he lacked beneficial interest over the suit land and his action to register the caution was done in bad faith.
16. That the Plaintiff was the sole indefeasible and absolute owner of the land parcel No Kericho/Kongotik/1200 as per Pf exh 1, he therefore had all rights at the exclusion of anyone else. The Plaintiff sought that the matter be determined in his favour and that the Defendant pays the costs of the suit and interest thereon.

Determination.

17. I have considered the Application herein as well as the submissions and I find that it is not in dispute that the suit parcel herein LR No Kericho/Kongotik/1200 is registered to the Plaintiff/Applicant.
18. Section 73 of the Land Registration Act makes provisions on removal of a caution and stipulates thus:
 - (1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.
 - (2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.
 - (3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.
 - (4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for the payment of costs.
 - (5) After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.
 - (6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.'
19. It was the Plaintiff's submission that he had requested the Land Registrar in a meeting convened by him (Registrar) for a hearing on the removal of the caution but the Registrar had declined and that was the reason that he had come to court for the caution to be lifted.
20. The Defendant upon being served with the application did not respond or come to court to testify and therefore the application herein is unopposed.



21. The Plaintiff, being the proprietor of the suit property his right is protected under the law to that effect.
22. Section 24(a) of the *Land Registration Act* outlines the interests and rights of a registered proprietor as follows;
- ‘the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....’
23. Section 25(1) of the *Land Registration Act* also stipulates that ;
- ‘The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...’
24. In light of the above, it is trite that the Plaintiff being the duly registered proprietor of the suit property is entitled to all the rights appurtenant thereto which simply means that as an absolute proprietor, he can deal with it in whichever way he so desires. He can either subdivide it amongst his children or even dispose it of at his pleasure. The Defendant therefore has no right to either place a caution over the land or stop the Plaintiff/Applicant from dealing with the land as he deems fit on an allegation that the Plaintiff was his father, since he has no entitlement to it.
25. In *Maria Nganga Gwako vs Charles Mwenzi Nganga*, Civil Appeal No287 of 2012 [2014] eKLR the Court had held :-
- “When a caution is objected to by a proprietor of land affected thereby, the onus is upon the cautioner to justify the lodging of the said caution and the need for it to remain in place.....
- In the absence of any reasonable cause shown by the Respondent as to why the said caution should not be removed, the application for the removal of the same must succeed”.
26. The provision of Section 73(1) of the *Land Registration Act* 2012, are clear to the effect that the Court has discretion to remove any caution placed on the suit property. The Court finds that as behooved by Sections 3A and 63(e) of the *Civil Procedure Act*, it has powers to make necessary orders for end of justice to be met. By ordering the removal of the caution/restriction herein, the Court will be issuing the said necessary orders which will ensure that the end of justice is met.
27. I find that the Plaintiff has proved on a balance of probabilities why the Defendant has no right to place the caution on his title and why the caution placed by the Defendant needs to be removed. The suit succeeds to this end, and I direct the Land Registrar to remove the caution lodged on parcel No Kericho/Kongotik/1200 within 30 days of the delivery of this ruling. I make no orders to cost.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 23RD DAY OF MARCH 2023

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

